

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH,
KOLKATA**

.....
ORIGINAL APPLICATION No. 43/2022/EZ

IN THE MATTER OF:

Tribunal on its Own Motion

**Re.:- Movement of Heavy Loaded Dumpers, Trucks and
Traffic Control on the roads around Shivmandir Bazar
and adjoining area,**

....Applicant(s)

Versus

- 1. Member Secretary,
West Bengal Pollution Control Board,
Paribesh Bhawan, Sector-III, Salt Lake,
Bidhannagar, Kolkata - 7400106,**
- 2. The District Magistrate, Darjeeling,
Chauk Bazaar, Darjeeling, West Bengal,
Pin - 734101,**

....Respondent(s)

COUNSEL FOR APPLICANT:

Suo Motu,

COUNSEL FOR RESPONDENTS :

**Mr. Dipanjan Ghosh, Advocate for R-1,
Mr. Sibojyoti Chakraborty, Advocate for R-2,**

JUDGMENT

PRESENT:

**HON'BLE MR. JUSTICE B. AMIT STHALEKAR (JUDICIAL MEMBER)
HON'BLE MR. SAIBAL DASGUPTA (EXPERT MEMBER)**

**Reserved On:- July 26th, 2022
Pronounce On:- July 28th, 2022**

1. Whether the Judgment is allowed to be published on the net? **Yes**
 2. Whether the Judgment is allowed to be published in the NGT Reporter? **Yes**
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JUSTICE B. AMIT STHALEKAR (JUDICIAL MEMBER)

Heard the learned Counsel for the parties and perused the documents on record.

2. This matter has been taken up *Suo motu* on the basis of a complaint dated 02.03.2022 filed by Shivmandir Nagorik Mancha. The Grievance of the complainants is that the movement of heavy six wheels Dumpers/Trucks in the Halermatha, Chaitannayapur, Kharag Singh Road, Shantipur, Sarat Nagar, Leninpur under Atharakhai Gram Panchayat and Matigara Block of District Darjeeling, is causing air, noise and dust pollution. Besides this, dumpers are moving at night disturbing the people. The people are also not able to move on the roads safely and fearlessly and the roads and drains etc. are also being damaged. These dumpers are said to be carrying sand and stone from the Balason River bed.

3. It is also stated that due to the weight of the trucks and goods being carried by them, the roads are being damaged as these have not been constructed to bear such heavy weight and the reconstruction of the roads is also not to be seen anywhere.

4. Notices were issued to the Respondents and in response they have filed their counter-affidavits.

5. In the affidavit of the District Magistrate, Darjeeling, dated 24.05.2022, a Status Report along with an Action Taken Report has been detailed in para 3 (page no. 13 of the paper book) of the affidavit which reads as under:-

- *“Originally this road was constructed by Siliguri Mahakuma Parishad from Special Asstt. Fund in the year 2015-2016.*
- *Defect liability period is 1(one) year from completion of work which is 20.11.2016.*
- *Considering the fact that this road being damaged again and again due to plying of heavily loaded vehicles, SMP took initiative for reconstruction of road with higher specification as per prevailing requirement to carry heavier load (T9 category traffic)*
- *Accordingly DPR for Construction of Road from Military Camp to Kalibari via Haler Matha and Sadhan More under Atharakhai GP in Matigara Block, Siliguri Mahakuma Parishad was prepared and sent to P&RD Deptt. Vide Memo no. 540/RIDF/SMP, dated 09.07.2021 to incorporate it in RIDF XXVII.*
- *Then Department issued Administrative approval vide memo no. 1627(22)-RDP/RIDF/1S-27/2021 dated 15.0.2022 and instructed the Superintending Engineer North Bengal Circle to invite the e-tender for execution of work.*
- *Superintending Engineer, North Bengal Circle invited a Tender vide NleT No.01 of 2022-23 dated 13.04.2022 and technical scrutiny done on 14.05.2022 and Financial opening Scheduled on 17.05.2022 for onward submission to competent authority i.e. P&R department, Government of West Bengal for acceptance.*

- *After acceptance & finalization of e-Tender process by Superintending Engineer North Bengal Circle & P&RD department and after receiving the AOT (Acceptance of Tender) from the concerned office / department, SMP will start the execution of the said work immediately.”*

6. It is also stated that subsequently the Block Development Officer, Matigara Development Block vide his letter dated 20.05.2022 informed the Additional District Magistrate (Development) Darjeeling, that further steps have been taken which read as under:-

“The road from Halermatha via Leninpur towards BDO office is one and only road for moving vehicle like private car, school buses and Trucks.

The road was fully damaged so, as custodian of Atharakhai Gram Panchayat the road has been repaired vide work order no. 1874/AGP/2021 dated 11.08.2021 for the maintenance of bituminous surface road.

And the construction of road from Military camp to Kalibari via Haler Matha and Sadhan more under Atharakhai G.P. in Matigara Block under Siliguri Mahakuma Parishad, the tender have been floated by the office of the Superintending Engineer, WBSRDA, P&RD Department, North Bengal Circle, Jalpaiguri vide e-NIT No.01 of 2022-23 and the work may start very soon.”

7. The Respondent No.1, West Bengal Pollution Control Board, in its affidavit dated 25.07.2022 has stated that the Board inspected the area in question on 21.07.2022 in the presence of the complainants and an Inspection Report has been prepared. The Observation and Remarks in the Inspection Report read as under:-

“Observation:

Joint BDO of Matigara Block Development Office was met prior to the inspection. Necessary information regarding the matter, locations & complainants were gathered. One associate from the BDO office was included with the inspection team for identification of the locations.

The representatives of ShivmandirNagarik Mancha who are the complainants have been met. The complainants have alleged that approximately 350 dumpers / trucks carrying sand from the riverbed of the Balason River make a 24-hour round trip on these roads. The dust pollution caused by the un-pitched kaccha dirt roads and the excessive honking of heavy trucks / dumpers is creating great disturbance and distress to the locals. They suggested that the Himul Road, about 1 km from the village leading to the Balason River, should be used to move such dump trucks and heavy vehicles carrying sand.

It has been observed during inspection that it is a densely populated area, inroads of which are used for the movement of the alleged trucks/dumpers. Two schools are there in the area, one of which named Shishu Tirtha (Pic-4) is located just adjacent to the stated road.

At present sand lifting was stopped from 01.07.2022 due to an order of District Magistrate, Darjeeling dated 27.06.2022 in pursuance of the Sustainable Sand Mining Management Guidelines, 2016 of MOEF & CC, Govt. of India restraining all types of mining operations like lifting, loading and transportation of sand from riverbeds during monsoon season. During inspection no movement of trucks/dumpers was observed on the stated routes. Hence it was not possible to measure the level of air/dust and noise pollution caused by the movement of heavy trucks/dumpers. However condition of the roads was found to be wretched. Large potholes were found on those

roads & side drains were found damaged (Pic-1,2,3). River Balason was visited & found that sand mining was carried out at some locations through tractors & small trucks/Shaktimans (Pic-5);however no dumper loading was observed.

Remarks:

As the area is thickly populated, movement of sand loaded dumpers/trucks through the inroads may cause air & noise pollution.”

8. Photographs have also been filed along with the Inspection Report in proof of the averments made in the Report.

9. A perusal of this report would show that all sand lifting in the area has been stopped from 01.07.2022 by the order of the District Magistrate, Darjeeling, keeping in mind the provisions of the Sustainable Sand Mining Management Guidelines, 2016 of the Ministry of Environment, Forests and Climate Change, restraining all types of mining operations like lifting, loading and transportation of sand from river beds during monsoon season.

10. In the report it is also stated that during inspection no movement of trucks/dumpers was observed on the road and, therefore, it was not possible to measure the level of air, dust and noise pollution caused by alleged movement of heavy trucks and dumpers. It is, however, stated that the condition of the road was found to be very bad (wretched). There were large potholes on the road which was found to be damaged. The Inspection Team also visited River Balason and found that sand mining had been carried

out at some locations through tractors and small trucks but no dumper loading was observed.

11. Considering the Inspection Report, we find nothing further remains for adjudication in this Original Application. The Original Application is, however, disposed of with the following directions:-

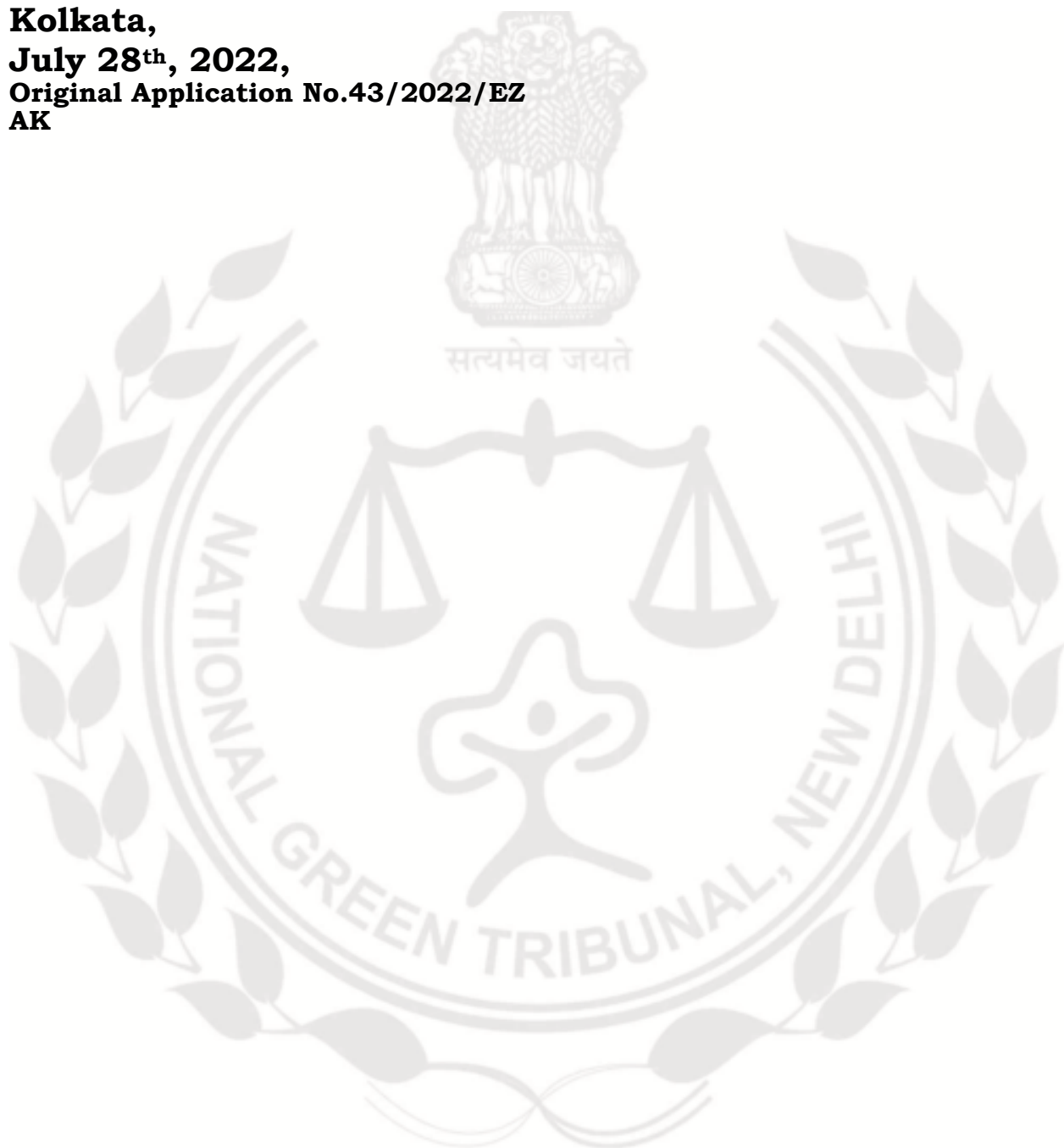
- (A) The Respondents shall ensure strict compliance of the Sustainable Sand Mining Management Guidelines, 2016;*
- (B) It shall be the duty of the District Magistrate, Darjeeling, to ensure that there shall be no sand mining permitted with the use of dumpers or JCBs or other heavy vehicles in the area in question nor will dumpers or heavy vehicles be permitted for loading and transportation of sand from the river bed of River Balason;*
- (C) The West Bengal Pollution Control Board shall regularly monitor the ambient air quality to ensure that there is no violation of Air (Prevention and Control of Pollution) Act, 1981, considering the own case of the Board that the area in question is thickly populated;*
- (D) The West Bengal Pollution Control Board shall also ensure that noise pollution does not exceed the decibel levels as prescribed in the Noise Pollution (Regulation and Control) Rules, 2000.*

12. There shall be no order as to costs.

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B. AMIT STHALEKAR, JM

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SAIBAL DASGUPTA, EM

**Kolkata,
July 28th, 2022,
Original Application No.43/2022/EZ
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